

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of
ALASKA PACKERS ASSOCIATION

Appearances:

For Appellant: G. L. Byers and Scott C. Lambert, attorneys
of the firm of Pillsbury, Madison & Sutro.
For Respondent: James J. Arditto, Franchise Tax Counsel;
William L. Toomey, Jr., Assistant Franchise
Tax Counsel.

O P I N I O N

This appeal is made pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner upon the protest of Alaska Packers Association to his proposed assessment of an additional tax in the amount of \$3,987.03 for the taxable year ended December 31, 1938, based upon the income of the Association for the year ended December 31, 1937. Upon consideration of the protest the Commissioner redetermined the additional tax to be \$3,134.54.

The sole question involved in this appeal is whether the Appellant must include in its income which is the measure of the tax the entire net rental received from chartering the S.S. ARTIC, rather than an allocable portion thereof based upon the percentage of its income received in business done within the State.

From the testimony of Scott C. Lambert it appears that Appellant operated several vessels in connection with its business of catching, canning, and marketing fish; that it was authorized by its articles of incorporation "to buy, sell, hire, let, lease, hypothecate and in any way deal with vessels;" that a times there was no immediate use for some of the vessels in connection with its fish business and that Appellant, therefore, sometimes chartered a vessel so that the vessel would not remain idle. Of the total vessels owned by Appellant none was chartered in 1935, two in 1936, one in 1937, none in 1938, and five in 1940.

The head office of the Appellant is in San Francisco, California, and the chartering contract in question was made there.. The vessel was chartered to the Alaska Railway, an instrumentality of the Federal Government, and Appellant received therefor \$9,045.00, and incurred expenses in connection therewith of \$1,040.21. The Commissioner included the entire net rental income in the measure

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of the tax,

In our opinion the chartering of this vessel was a part of the unitary business of Appellant and the net income therefrom was subject to allocation. Many of the expenses of maintaining a vessel continue while the vessel remains idle. This vessel was used by Appellant principally in its unitary business of catching, canning, and marketing fish. It was not the intention of Appellant to set aside the vessel permanently for use in *some* other business.

It also appears that Appellant needed more vessels at one season or during one year than during some other season or year, and that every ship would not be used in the fishing operations at all times. The chartering of this vessel was so closely connected with the general business of Appellant that it must be considered a part thereof and the income therefrom must, along with the *other* income from the unitary business, be allocated as required by Section 10 of the Bank and Corporation Franchise Tax Act.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding and **good** cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the action of Chas. J. **McColgan**, Franchise Tax Commissioner, upon the protest of Alaska Packers Association in redetermining the additional tax to be **\$3,134.54** for the taxable year ended December 31, 1938, be and the same is hereby modified as follows:

The Commissioner is hereby directed to treat the net income from the operation of said vessel as allocable income and to compute the additional tax on that basis. In all other respects the action of said Commissioner is hereby affirmed.

Done at Los Angeles, California, this 18th day of June, 1943, by the State Board of Equalization.

R. E. Collins, Chairman
Geo. R. Reilly, Member
J. H. Quinn, Member
Wm. G. Bonelli, Member

ATTEST: Dixwell L. Pierce, Secretary